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H - 90

International Court of Justice

H0090 - 0002

Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 22 March 1946, 1000-1300, Lord Justice Lawrence, presiding.

DR. SERVATIUS (Counsel for the Leadership Corps): Mr. President, yesterday the translation of the document D-728 was handed over to me.

THE PRESIDENT: What is the number of the document?

DR. SERVATIUS: D-728.

THE PRESIDENT: Yes.

DR. SERVATIUS: Yesterday the translation of that document, D-728, was handed to me. It is the document which yesterday was objected to because it was considered not authentic.

THE PRESIDENT: Yes.

DR. SERVATIUS: I request to have this re-translated, since this translation is different from the original wording and it is difficult to find where those mistakes are which were the reasnn for the objection against the document. On the first page of that document there are 20 to 30 objections, and the interpreter, since he could not see the significance of the document, translated it quickly without underlining the important points. A thorough translation ought, therefore, to be prepared, which would enable us to give you a proper conception of the original document. I am fully aware of what the difficulties are.

THE PRESIDENT: Certainly, the translation shall be checked by a different translator, or, if you like, by two different translators.

DR. SERVATIUS: May I ask to have a new translation made, since the old one which we have here is also evidence for the fact that the original already contains considerable mistakes? We would have the chance to compare them.

THE PRESIDENT: Certainly it shall be checked and re-translated.

DR. SERVATIUS: Then, may I make a second motion; namely, may we have the opinion of an expert on the German language, which opinion

will ascertain that the author of this document does not have full control of the German language and that it must have been made by some one who was a foreigner. I do not want to to into too much detail, but, if necessary, I will make a written application as well.

THE PRESIDENT: I think you must certainly make a written application about that.

DR. SERVATIUS: I shall certainly hahd it in in writing.

HERMANN WILHELM GOERING -- RESUMED

CROSS EXAMINATION--Continued

BY GENERAL RUDENKO:

Q Defendant Goering, in your statement you said that the attack on Poland was perpetrated after the bloody happenings in the town of Bromberg.

A I said that the date for the attack was caused by certain bloody events which, in addition to a large number of others, caused the so-called bloody Sunday at Blomberg.

Q Do you know that these events happened on 3 September 1939?

A I may possibly make a mistake regarding the date at Bromberg, I would have to have details about that. I merely quoted that as one example amongst a lot of others.

Q It is understandable. The attack was perpetrated on 1 September, and the events in the town of Bromberg, which you just mentioned to the Tribunal, happened on3 September 1939.

GENERAL RUDENKO: I would submit to the Tribunal the document and evidence from the Commission for the Investigation of German Crimes in Poland, which is duly certified in accordance with Article 21 of the Charter. From this testimony it is clear that the events about which the defendant here is testifying happened on 3 September 1939. That is to say, on the third day after the attack by Germany on Poland.

THE PRESIDENT: You can put the document to the witness, if you want.

GENERAL RUDENKO: I have no German text. I have it in English and in Russian. I just received this document. It isdated 19 March, and I submit it to the Tribunal as evidence without doubt.

H0090 - 0003

THE PRESIDENT: I do not think this is the appropriate time to put documents in in that way.

Very well, you can put the document now if you like.

GENERAL RUDENKO: Thank you, Mr. President.

THE PRESIDENT: It must be translated into German, of course.

H0090 - 0004

H0090 - 0005

GENERAL RUDENKO: I have no German translation of this document.

THE PRESIDENT: It has to be translated into German in order that defendant's counsel may see it.

GENERAL RUDENKO: Yes,sir, it will be done.

DR. STAHMER: Lawyer Stahmer for the defendant Goering.

Mr. President, may I ask to have the document read--It seems to be a very short document-- so that we can gather what is contained therein?

THE PRESIDENT: Very well. Will you read it, General Rudenko?

GENERAL RUDENKO: I can read it into the record; it is not very long:

"Certificate based on the investigation performed by the Polish Legal Authority. The High Commission for the investigation of German crimes in Poland certifies that the so-called Bloody Sunday in the town of Mickdish (?) took place on the 3rd September, 1939, that is to say, three days after the time when Poland was subjected to the German attack.

"On the 3rd September 1939, at 1015 in the morning, the German forces attacked the Polish Army which was retreating from Micdish. Of the crumbling Polish retreating army 238 Polish soldiers perished and 258 Germans. After the entrance of the German Army into the town of Mickdish, they began mass execution, arrest, and deportation to concentration camps of Polish citizens, which were performed by the German authorities, the SS, and the Gestapo. There were 10,500 murdered and 30,000 who were exterminated in the camps.

"This certificate appears as an official document of the Polish Government and is submitted to the International Military Tribunal in accordance with Article 21 of the Charter of the 8th of August 1945.

"Stephan Kurovski, a member of the High Commission for the investigation of German crimes in Poland."

I should like to prove by this document that the events regarding which the Defendant Goering gave testimony happened after the attack by Germany on Poland.

THE WITNESS: I am not sure whether we are both referring to the same event.

BY GENERAL RUDENKO:

Q I am speaking about the events in the Town of Mickdish. you spoke about them.

A

H0090-0006

A Maybe there were to such events, one Town of Bromberg.

Q It is quite possible.

I should like to know the following question:

Is it known to you that there was an order by the OKW regarding the stigmatization of Soviet prisoners of war, and what do you think about that?

A That order is not known to me at all, and no representative of the air force was present, as I ascertain from the files. I am talking about--

Q I am interested in the fact of whether you knew about this or not. The orders are not quite clear.

Do you know that the German Command stated that Soviet war prisoners and citizens had to be used for hard labor and that they had to transport bombs that had not exploded? Do you know about that?

A That Russian pioneers had to clear mines which had been laid by the Russians I have knowledge. Just how far civillians had been employed for that purpose I do not know. B ut it was possible.

Q It is quite clear.

Do you know about an order regarding the annihilation of the towns of Leningrad, Moscow, and other towns of the Soviet union?

A In my presence the destruction of Leningrad was only mentioned in the document which was read out yesterday, and maybe it is meant in the sense that the Finns in case of capture of Leningrad won't have use of such a big city. Of the destruction of Moscow I know nothing at all.

Q Do you remember the minutes read yesterday of the meeting of 16th of July, 1941?

A I mentioned and testified to that yesterday.

Q Did you speak about this same document? Regarding this statement. there were also official orders?

A Would you be good enough to putnbefore me and then I can ascertain whether they are correct or not and whether they were known to me.

Q I do not wish to submit these documents to you. They have already been submitted to the Tribunal. I am only interested in the fact of whether you were aware of these orders.

A I haven't received any order to destroy Leningrad of Moscow in the sense which you have indicated.

Q

H0090 - 0007

Q All right. You were only told about the very important happenings such as the annihilation of cities, and so forth?

A If a town was to be destroyed by bombing, then that order would have been given to me directly.

Q On the 8th of March, here in the Tribunal, your witness Bodenschatz stated that you told him in March 1945 that many Jews were killed and that "for that you will have to answer very dearly."

Do you remember this testimony of your witness?

A That statement, in that form as it has been translated, I do not recollect at all. That was never said by that witness Bodenschatz. Please refer to the record of the session.

Q How did Bodenschatz say that? Do you remember his testimony?

A He said that if we lose the war we would have to pay dearly.

Q Why? For the murders which had been perpetrated?

A No, quite generally, we have seen it.

Q I have a few concluding questions to put to you.

First of all, regarding the so-called theory of the Master Race, I should like to putwto you only one question in this connection and I should like you to reply directly to it. Were you in accord with this principale of the Master Race or were you not in accord with it?

A No, and I have stated that I have neither used that expression verbally or in writing. The differences between races of course I recognize indeed.

Q But do I understand you correctly that you are not in accord with this theory?

A I have never expressed my agreement with the theory that one race is superior to the other and should be destroyed by the Master Race. I have merely underlined the differences between races.

Q Can you not reply to this question yes, you are in accord with it or no, you disagree with it?

A I personally do not consider it right.

Q The next question: You have stated here at the Tribunal that you did not agree with Hitler regarding the question of Czechoslakia, the Jewish

H0090 - 0008

question, the question of war with the Soviet Union, the value of the theory of the Master Race, and the question of shooting of the British airman who were prisoners of war. How would you explain that, having such serious differences you still thought it possible to collaborate with Hitler and to continue his policy?

A. That was not the way I worded my answer. Here, too, we must consider and separate the periods in phases of time. As to the attack against Russia, we were not concerned with basic differences but with differences of time.

Q. Excuse me; I don't want you to be lengthy on this theme. Will you reply directly?

A. All right. I can be of a different opinion from that of my supreme leader, and I can explain that opinion clearly. If the Supreme leader insists and maintains his opinion clearly. If the Supreme leader insists and maintains his opinion and I have sworn allegiance to him, then the discussion comes to an end, just as it is the case elsewhere and I don't think I need to be any more clear about that.

H0090-0009

Q. You are not just a simple soldier, as you stated here; but you have presented yourself to be also a statesman.

A. You are absolutely right. I am not a simple soldier, and particularly because I am not a simple soldier but occupy a leading position I had to set an example for the attitude and adherence to an oath of allegiance. My attitude had to be an example for the ordinary soldier.

Q. In other words, you thought that, with the presence of these differences with Hitler, you had to be loyal to him and to collaborate with him?

A. I have emphasized -- and I maintain -- that that is correct. My oath does not only hold good in good times but particularly when times are bad, although the Fuehrer had never threatened me or never told me that he was afraid for my health.

Q. If you thought it possible to cooperate with Hitler, as the second man in Germany, are you responsible for the organizing of gread murders of millions of innocent people independently, whether you knew about those facts or not? Tell me briefly, yes or no.

A. No, because I didn't know them or cause them.

Q. I should like to set out again whether you were informed of these facts or not.

A. If I don't know facts, then I can't be responsible for them.

Q. You had to know about these facts.

A. I shall be a little explicit about that.

Q. I should like to ask you to reply to me to this question: You had to know about these facts.

A. Why did I have to know about them? Either I know them or I don't know them. You cannot only ask me if I was negligent and failed to obtain knowledge.

Q. You ought to know better. Millions of Germans knew about the crimes which were being perpetrated, and you did not know about them?

A. Millions of Germans didn't know about them either. That is a statement which is by no means an established fact.

Q. The last two questions: You stated to the Tribunal that Hitler's Government brought Germany to life. Do you still think that it was so?

H0090-0010

A. Until the beginning of the war, under all circumstances, yes. The collapse was due to the last war.

Q. As a result of which you brought Germany -- as a result of your politics -- to military and civilian destruction.

THE PRESIDENT: Does the Chief Prosecutor for France wish to cross examine?

M. CHAMPETIER DE RIBES: I would like to answer to the desire expressed by the Tribunal and to abbreviate as much as possible the discussions of this trial. The French Prosecution has come to an agreement with Mr. Jackson and with Sir David and the questions brought up to Goering as a witness should only be those which are considered pertinent. The questions have been asked and we heard them, as far as it was possible to obtain from him anything except propaganda speeches.

The Defense will not be able to complain that its freedom has been curtailed. It has been able to use its freedom abundantly in the past twelve days and has not been able in any way to weaken the Prosecution accusation. The second man in German life has been able to pretend that he was in no way responsible for the war; that he knew nothing of the atrocities committed by the men that he was so proud of.

THE PRESIDENT: You will no doubt have the opportunity later to make comment, but the question that I ask you now is whether you wish to ask the witness definite questions.

M. DE RIBES: Mr. President, I have finished all that I wanted to say to you. After all the long discussions, the French Prosecution feels that nothing has been changed in the accusation which we brought forth previously. We have no further questions to ask the witness.

THE PRESIDENT: Dr. Stahmer?

REDIRECT EXAMINATION

BY DR. STAHMER:

Q. The British Prosecution has stated that the Hermann Goering Division during its use in Italy had received direct orders referring to the fight against the partisans. Is that statement correct?

H0090 - 0011

A. No. The Hermann Goering Division was a ground division and was tactically attached to an army and army group. Consequently, it never received any orders directly from Berlin or my headquarters, which was not at the same location. In fact, no orders with tactical use could have reached it through those channels. I could not have given it any orders as to where it was to be used in the partisan fight and how. This concerns orders only which referred to materiel and equipment questions, and they were orders also which referred to certain orricers; not did the division report to me daily.

SIR DAVID MAXWELL-FYFE: I didn't catch that. I am sorry, My Lord, I should have spoken earlier. I gather that these questions are directed to the Hermann Goering Division. The Defendant never dealt with that point when he was being examined in chief; and, therefore, I never dealt with it in cross examination, because the point had not been raised. It is therefore my positi that it is quite inadmissible for the matter to be raised in re-examination.

THE PRESIDENT: You must remember, Sir David, that the practice in foreig countries isn't the same as the practice in the United States and in England; and although it is perfectly true that Dr. Stahmer, according to the rules of England at any rate, would not be able to raise this point in reexamination, w are directed by the Charter not to deal technically with any question of evidence. It may be you would have to ask him some questions thereafter in cross examination, although I hope that won't be necessary, in view of the evidence of the witness Kesselring.

SIR DAVID MAXWELL*FYFE: I considered that point, but I only wanted to make it clear that the Prosecution has not dealt with this point at all, because it hadn't been raised previously.

THE PRESIDENT: No; either in the examination or in the cross examinatio

SIR DAVID MAXWELL*FYFE: Or in the cross examination.

THE PRESIDENT: Sir David, I had already noticed the point that the quest hadn't been raised in the evidence of Hermann Goering.

DR. STAHMER: May I add an explanation and raise the point that I receive that document only yesterday and consequently could not have referred to that question any earlier.

H0090-0012

THE PRESIDENT: But, if my recollection is correct, the witness Fieldmarshal Kesselring raised this very point himself, and therefore the point was obvious and could have been raised in examination in chief, in which case it would have been of the Defendant Goering. It doesn't depend upon any particul document; it depends upon the evidence of the Fieldmarshal Kesselring, who said -- I think the word as it was translated was that he was by-passed between the division Hermann Goering and the Defendant Goering, although the division Hermann Goering was under his command. So it has nothing to do with any document.

DR. STAHMER: May the witness continue now, sir?

THE PRESIDENT: Yes.

A. The division was under my command only as far as personnel was concerned -- commissioning of officers and equipment -- but not as far as tactical use was concerned. I did not receive daily reports but received them at irregular intervals regarding certain events -- losses, replacements, etc. That, on the whole, was all the connection I had with that division. For its use in battle, I could be have given any orders, since it was under the comman of parts of the army.

Q. Did you receive a report regarding the events at Tivitella?

A. No, I did not receive that report. It wasn't until I heard the affidavit of a general of the army that I heard about it. The general who was commanding that division and who was also responsible for these matters is apparently now trying to push that responsibility on to the division, and because of the name of the division on to me.

Q. Your relationship to Hitler and the influence upon him has often been touched on during cross examination, and just now too. Could you just summarize the situation briefly and refer to the various periods, and are ther any facts which are necessary to judge that relationship?

A. Already during the cross examination I have pointed out that you have to deal with a very long period here. In 1923, when I was an SA leader, my relationship was normal. Then there is a long interval -- 1931.

MR. JUSTICE JACKSON: May it please the Tribunal: I seems to me in the

H0090 - 0013

interests of time highly objectionable to allow the witness now to summarize. He was given the advantage of answering any questions he wanted as he went along. It seems to me that when he has covered a subject at least once -- and as a matter of fact he covered this one four or five times in an address at nearly every question that would permit -- that that at least should bring us to the end of that subject. It was exhausted.

The matter of time here is a grave matter. By our calculation -- a careful calculation -- of the witnesses which have been allowed, this trial will now project into August. It doesn't seem that we should allow him to play this game both ways, to make his speeches during the cross examination and then to sum them up again afterwards.

H0090-0014

THE PRESIDENT: Dr. Stahmer, the Tribunal has allowed you to ask questions which, strictly speaking, are not admissible in re-examination and I want to make it clear to you what questions are admissible in re-examination -- only those which arise out of the cross examination. As to this particular question, the Defendant Goering was allowed to make what were really speeches in his examination in chief without any interruption whatever and he went over the whole history of the Nazi regime from its inception until the end of the war and the Tribunal does not consider that he ought to be at liberty to go over the same ground again in re-examination.

DR. STAHMER: Mr. President, I had merely put that question because up to now it had not been dealt with in summary and I thought it advisable for the judgment of the defendant and his attitude during that time, to have a complete and detailed story of this phase which is important for the decision made in this trial. If, however, the Tribunal objects to this question, I shall certainly submit to that decision and withdraw the question.

BY DR. STAHMER:

Q. I have another question. During your examination, you have stated regarding certain accusations, that you considered yourself responsible and that you assume responsibility.

A. In connection with responsibility, you have to make a difference between factual and formal. Formally, I am assuming responsibility for all that that was done by all those departments and offices who were under my command; although I could not possibly have known or previously seen everything that was discussed or issued by those departments, I must nevertheless assume responsibility, formally speaking, for that, particularly where we are concerned with directives and measures which I had given generally and which were then executed. The actual responsibility, I see wherever orders, directives or measures were immediately originating from me and all facts and orders which were wigned by me personally and issued by me; that I am talking about facts and not so much general words and statements which were made during those twenty-five years here and there or in smaller circles. In detail, I want to talk about responsibility very clearly. The Fuehrer, Adolf Hitler, is

H0090 - 0015

dead. I was regarded as his successor in the leading of the Ferman nation. Consequently, I must declare and state upon the question of my responsibility that it was my aim --

THE PRESIDENT: The Tribunal would wish that you should not make speeches. The Tribunal is perfectly well able to understand the difference between formal responsibility and actual responsibility for orders given by you.

THE WITNESS: Consequently, I acknowledge that I am responsible for all I h ve done, that I have prepared the seizure of power, carried it through, strengthened it, and that I was attempting to make Germany free and great. I have done everything to avoid this war but after it had started, it was my duty to do everything that I had to do.

THE PRESIDENT: We have already heard you say that more than once and we do not wish to hear it again.

THE WITNESS: On the question of labor during the war, the inhabitants of the occupied territories were used to work in Germany and their countries were exploited economincally.

THE PRESIDENT: You are supposed to be asking questions of the witness. Now, what question is that in answer to?

DR. STAHMER: I had asked him on the question of his responsibility --

THE TRIBUNAL: You can ask him questions and not ask him general questions which invite speeches. If you have any particular questions to ask him which arise out of the cross examination, now is the time to ask it.

DR. STAHMER: Then I put this question: To what extend does he consider himself responsible for the questions which have been mentioned here regarding the deportation of laborers and workers from the East?

MR. JUSTICE JACKSON: I object to this question being put.

THE PRESIDENT: He has already told us about that. He answered that question more than once.

DR. STAHMER: In that case, I have not further questions to put.

THE PRESIDENT: Very well. Then the defendant can retire.

(The witness retired.)

THE PRESIDENT: Yes, Dr. Stahmer.

H0090 - 0016

DR. STAHMER: May I first of all give a summary of the present position of the trial so that the Tribunal can clearly seen how we are at present regarding the list of witnesses, and I was going to forego Dr. Lohse's examination.

THE PRESIDENT: "Dr. Lohse" did you way?

DR. STAHMER: Yes, as I said, Dr. Lohse. I do not wish to call. Then, the defendant has already given sufficient statements on that subject. Further more, I had been granted the Ambassador, Dr. Paul Schmidt, as a witness. That witness to whom I want to ask a few questions only, I should like to hear later on, namely, when he is being interrogated for the Defendant Ribbentrop, where he is to answer a large number of questions, and it appears to me more suitable to do it then; and I am in accord with the wish of my colleague, Dr. Horn, as well, if the Tribunal will agree to that procedure, to hear the witness Kollar.

THE PRESIDENT: Certainly.

DR. STAHMER: The Witness Kollar, as it has just been ascertained, is in Belgium and not, as previously thought, in Germany. Originally, it was planned to have him brought before the Tribunal provided he was resident in Germary. Consequently, I shall have to submit an interrogatory to that witness, which has been done, but the questionnaire has not yet been received in return.

THE PRESIDENT: Yes.

DR. STAHMER: Furthermore, I had received permission to put the questions to the Witness Freiherr von Hammerstein, Ondarza, Student, and Veltjens. I have been given permission to submit interrogatories to them, and this has been done but I have not yet received them back. In this case, the situation is that the addresses of the first two have since been ascertained; the rest, as to the other three witnesses, inquiries are still being made, so that I cannot yet read out their answers; and furthermore, interrogatories have been sent to Lord Halifax and Forbes and the questionnaires have been received, and I can read them out; and then there is a written statement as well.

THE PRESIDENT: What do you mean by "a written statement as well"? You said there are the interrogatories for Lord Halifax and Sir George Ogilvie Forbes.

H0090 - 0017

DR. STAHMER: Lord Halifax, and Forbes, interrogatories have been received. Regarding Ueberreiter, a written affidavit is available and I assume that that may take the place of the interrogatory or questionnaire.

THE PRESIDENT: Yes, I understand.

DR. STAHMER: Furthermore, we are prepared with the case Katyn. Five witnesses were considered and regarding their addresses, I am still making inquiries. I haven't received anything further and, therefore, I am not yet in a position to have these witnesses called before the Tribunal.

THE PRESIDENT: Yes, Dr. Stahmer. Was that all that you wish to say at this stage?

DR. STAHMER: Well, they are merely upon the question of the witnesses and now, of course, I shall still have to say what I have to say about the document and present them and then for the time being, I shall have completed my case. What I have to say about the documents has been compiled.

THE PRESIDENT: Just one moment.

DR. STAHMER: Yes, sir.

THE PRESIDENT: Yes, Dr. Stahmer, the Tribunal approves of the course which you suggest.

H0090 - 0018

MR. JUSTICE JACKSON: May I, in the interest of time, make a suggestion, Your Honor, that these documents which Dr. Stahmer proposes to offer have been translated in all four languages, so that the necessity of reading them in open court does not sustain. I cannot speak for my colleagues since I have not consulted them, but so far as the United States is concerned, we will not raise a question of relevancy. I suggest that the reading of whole document book seems a waste of time of the Trial Court since the documents are available in all four languages.

THE PRESIDENT: Dr. Stahmer, before we consider that course which has been suggested by Mr. Jackson, we should like to hear whether any of the Chief Prosecutors have anything to add to it.

SIR DAVID MAXWELL-FYFE: I would suggest that it is an excellent suggestion and I want to make it clear to the defense counsel that it will, on the whole, avoid agruments on relevancy and on the other hand the defense counsel could use any of the excerpts, and probably with more help to the Tribunal, if he would wait until his final argument to present these excerpts in support of his final argument. I consider that it will improve the general condition.

THE PRESIDENT: Thank you, Sir David. We will hear in in a moment, Dr. Stahmer, but I do not want you to go away. Has General Rudenk anything to say?

GENERAL RUDENKO: I am fully in agreement with the suggestion of Judge Jackson and we think it wise and also consider that the Tribunal accept these documents which have been translated in four languages. This does not exclude the right of the defense to submit various documents. In particular I have an objection against submitting documents as exhibits from documents of the supposedly "white books" which are being submitted by Dr. Stahmer. These exhibits have nothing to do with the present case and they should not be submitted.

THE PRESIDENT: Does the French Chief Prosecutor wish to add anything to what has been said?

M. DE RIBES: The French Prosecution would like to inform the Tribunal of a note concerning document 26, and wish to express objection to the

H0090 - 0019

admittance of this letter from the German Government to the French Government which concerns the treatment of German prisoners-of-war in France. This extract comes from a secret order of the Commanding General of the 9th French Army. The General commanding the 9th French Army is said to have published an order. This order was not given to us, therefore, it is only an assumption of the German government, which is the government of the defendant, and therefore we contend that the extract which is offered to us has no relevancy and we therefore ask the Tribunal to reject it.

THE PRESIDENT: We are not concerned with a question of relevancy at this point. The Tribunal at the moment is not considering the question of relevancy of any particular document. They are only considering Justice Jackson's suggestion that instead of having all of these documents read in full, which will take a very long time, the reason no longer exists to have these documents read since they have been put into four different languages by the prosecution's documentation department. The question of relevancy of individual documents or particular passages in the documents is decided by the Tribunal. As a general rule, and for the purpose of avoiding delay, the suggestion of Justice Jackson appears to have a great deal to recommend.

M. DE RIBES: The matter which is before us today, I thought, was to know whether all of the documents which are to be presented today are relevant, and that is why I asked that the Tribunal reject Document No. 26. If it is understood that this question may be reached later, there is not objection to postponing my objection. I wish only to state that Document Number 26 as Dr. Stahmer wishes to present it should be read in full to the Tribunal.

THE PRESIDENT: We would like to consider this matter, but before doing so, I would like to know if Dr. Stahmer understood what Justice Jackson said.

DR. STAHMER: Yes, indeed I understood. Mr. President, I should like to have a short discussion with the other defense counsels on this matter. I also want to point out now that some time ago we were willing to forego the reading of the indictment and that was not granted.

THE PRESIDENT: What did you say about the reading of the indictment?

DR. STAHMER: I now ---

THE PRESIDENT: Are you making a complaint because the indictment has been read?

H0090 - 0020

DR. STAHMER: No, no, no.

THE PRESIDENT: The matter stands upon a definite footing. The Charter, which is the document which governs the actions of this Tribunal, provided that the indictment must be read. What is not being suggested is not provided for in the Charter. The only reason why we reuled that the documents which the Prosecution must rely upon must be read in open court was because the Prosecution, at that time, had not found it possible to translate these documents into four different languages, and for the convenience and in fairness to the defendants and their counsel, we ordered that every sentence in a document upon which the prosecution relied would be read into the earphones so t hat they could come to you in German and so so that they could be put into the record at once in the transcript. That principle no longer applies to the documents which have been translated into four different languages by the Prosecution's Translation Division. Therefore, in the interest of time, which must be always equally important to the defense as well as to everyone else concerned, the Tribunal feels that the suggestion which Justice Jackson has made is a very sound one and you, of course, must comment in any way you think right during the course of your final presentation upon the document which is subject to any question of relevancy which may seem of importance. There may be certain documents submitted by the Prosecution, and as Justice Jackson said, he will not raise a question of relevancy, which should be into the document book and should be considered by the Tribunal.

Perhaps it will be ap ropriate for us to adjournnow and you can discuss the question with your colleagues.

(A short recess was taken)

H0090 - 0021

DR. DIX (Counsel for defendant Schacht): Gentlemen of the Tribunal, I was of course not in a position to have a writ cast among my colleagues on the suggestion of Mr. Justice Jackson, particularly for the reason that not all defense counsel are present here at the moment. But I have been able to convince myself that the majority of the defense counsel, so far as the reason for my statement is concerned, approve, and I have no doubt whatever that all defense counsel are behind the application which I am about to make and which will be that the motion of Mr. Justice Jackson should be turned down. But for reasons of correctness and loyalty I think it is my duty to emphasize that naturally everyone of the gentlemen is entitled to speak on this question for his own case and the complex problems which he represents.

And now to the matter as such. The application of Mr. Justice Jackson was that in principle all the documents to be submitted by the defense, — that in such a case such an accumulation of the contents of documents would be introduced into the trial without that their verbal presentation in opposition should assure that they are brought to the knowledge of the public; which would mean that the whole world which is passionately interested in this trial, would not know their contents.

I will not use legal language and dialect to refer to the Charter and to quote rules which could be used to contradict Mr. Justice Jackson's application. But I do quote and put at the head the principle which refers to the absolute correctness which is in existence between the Tribunal and us and the prosecution and us, and I am sure that there will be no difference of opinion, namely, that this whole trial must regard as its first principle that of justice and fairness. For that reason too the authors of the Charter have included paragraph four of the Charter and have given it quite a definite heading. It says, "Rules For a Just Trial." But I cannot consider it just and I cannot consider it fair if the prosecution month after month have the right to present their documents not only once but sometimes repeatedly and often.

These documents were read and they came over the loudspeaker without being brought to the knowledge of the public, and I must remark at this point that when these documents were presented not only parts of the documents were presented, which in the opinion of the prosecution were implicating to the defendants, but parts were omitted which in our opinion were of importance to

H0090 - 0022

the defendants and mitigating. It must be considered an injustice that a defendant should not have the opportunity too, and through his defense to bring to the knowledge of the world and the public those matters which are and in the opinion of the defense are in his favor. If the prosecution have previously had the right and opportunity to apply that procedure to that detail, which was implicating,

H0090 - 0023

may I draw your attention to the fact, as I have said previously, and repeatedly, that certain implicating points have not only been brought to the knowledge of the world when documents were presented, but were repeated under the heading that they were put to the witness, or to the Defendant who was used as a witness. In that manner the listening world was again and again given the contents of these documents.

May I ask you, Gentlemen, with all my heart and most urgently, to put yourself behind the furtherance of a just proceeding, which you and the authors of this Charter must have desired, and to give the same opportunities to the Defendant.

In addition, as a reason for this application of Mr. Justice Jackson, it was stated that the point of view of shortening the trial was important. We the Defense do in no way deny the necessity that this trial should be confined to the necessary time. But perhaps I may in this connection draw your attention to a statement of the President at the Belsen trial which he made to the press when the press had criticized the lengthy duration of that proceedings. The sense of that statement was that no matter how long a trial would last, this was not to be regretted, as long as it served the truth and the hearing of the truth. That principle, too, I ask you to put before the time-saving factor in this trial.

And finally, may I -- without assuming authority which I do not have -- refer to the extent of the criticism which is stated by the Prosecution, and may I draw your attention to the fact that in connection with the duration of the trial so far, should anybody consider it too long, it is my feeling that it is not too long. At any rate, it was not caused by the Defense. We up to now -- and I think I can say this with a clear conscience -- have not done anything, said anything or caused anything which would give reason for our being accused of delaying this trial, at least not justly.

If furthermore, as your Lordship has pointed out, the reason no longer exists which caused the Tribunal originally to order that those parts of documents which were the subject of the trial substance should be presented verbally, then I should like to point out that the most important majority

of the documents which were produced at the time and partly presented verbally were even at that time available in the translation, in four languages.

Furthermore, I should like to point out that the documentary evidence, if it is to be understandable to the Tribunal and to serve the purpose of finding the truth, is without doubt in many cases in need of the explanation of the Defense Counsel. The possibility of an amplification or explanation would disappear if we are not able to present that material to the Tribunal verbally.

As far as I have been able to ascertain, without wanting to prejudice anybody here, my colleagues have by no means any intention of quoting the entire contents of the document book.

H0090 - 0024

H0090 - 0025

As far as I understand it, they have in most cases merely intended only to present excerpts which they are going to designate and about the relevancy of which one can talk afterwards. That emphasis which is to put on those relevant parts of the doument would not be possible, either, if the Tribunal would permit the application of Mr. Justice Jackson go through. Likewise, as I said before, it would not be possible -- in connection with documents read by the Prosecution -- to have those parts of documents which have not been read but which are mitigating for the Defendant accused.

If it has been said -- as your Lordship has pointed out as a fact -- that the Defense Counsel have an opportunity to refer to these parts of documents during their presentation, then I am of the opinion that I agree with the Judges that the presentation should if possible include a coherent and clear summary of the total substance of the trial. If we must rely during our presentation on parts of documents and can quote them once more, to which we attach importance as evidence, but which we wish to mention during our case only summarily, then the danger arises that the completeness and coherence of our case is to infringed. And the further danger arises that the saving of time which Mr. Justice Jackson wishes to achieve through his application, is once more lost; because the final statements which we have to make will be correspondingly longer, which they need not be if their purpose and their task is to be fulfilled by having a strict summarization of the total substance.

I consider it even possible that within our presentation a difference of opinion as to the importance of an individual document might arise, which would mean a considerable disturbance and delay in the proceedings, whereas if one can submit the document in its important parts here, together with an explaining part, one would have an immediate opportunity to state just why one considers the presentation of that document as relevant so that the Tribunal would have an opportunity to make an early decision about the relevancy of that document.

In my view, the important points which should be quoted against Justice Jackson's application can be deceiving. I summarize:

As far as I am concerned, the most important point of view is that of fairness and justice. The Defense would have to, as I ascertained without

H0090 - 0026

doubt in conversation during the interval, consider it a very severe and unbearable limitation of the Defense, if they are deprived of the possibility contrary to the practice exercised by the Prosecution, of presenting in their turn, the relevant and important parts of the documentary evidence to the Tribunal verbally, together with an explanation.

H0090 - 0027

I am ofthe opinion that it is a simple question of fairness and agreement between Prosecution and Defense that now the Defense, too, should have the same possibilities and facilities which the Prosecution-- and this is not meant to be a criticism but merely a statement of fact--has had to a considerable and sometimes cumulative degree for themselves.

May I request, therefore--and I think that I have the entire Defense behind me with this request--that the application of Mr. Justice Jackson be refused.

THE PRESIDENT: One moment. You began your address by saying that you would not refer to the Charter. On what Article of the Charter do you rely for your argument that all documents which are presented must now be read?

DR. DIX: I said that I would not refer to the detailed parts of the Charter while giving the reasons for my application. I have based my application merely on the heading of Article 4, where it says "Rules for a Just Trial", and I have explained and need not repeat that I would consider that the consequences of Mr. Justice Jackson's application would not lead to a just trial, but I knew that I would probably have my attention drawn to certain details of the Charter which, directly or indirectly, being given a certain legal meaning, could be used as reasons for my application, but I have consciously and deliberately refrained from doing so, since these rules in detail are not sufficiently strong.

Important and strong in my conception is the principle of fairness, and the other considerations are such as I have presented to the Tribunal. I think perhaps here we must have a misunderstanding.

THE PRESIDENT: But you will not have omitted to notice that Article 24 deals expressly with the course of the trial. Do you rely upon any part of Article 24?

DR. DIX: No, no, I have deliberately not referred to any part of Article 24, since that Article gives considerable powers to the Tribunal regarding the general ruling on proceedings which, so far as the question with which we are concerned now, do not apply. This is merely a question of fairness, and, if I may add, it is a question of the principal basis of a verbal trial and an oral trial, and we have a public session, an oral trial.

H0090 - 0028

It is here in existence. I am not sure whether--I do not think it is meant to be public in the Charter, but it exists and since it is in existence, we must adhere to the basic principles. Thus, in my opinion, the defendant must have the right to quote in public what is in his favor after the Prosecution has once more, before the world and public, stated just what is against the defendant.

THE PRESIDENT: I want to ask you another question. Are you suggesting that the Defense should be able to quote, to read documents, more than once?

DR. DIX: I am not suggesting that at all. As far as I am concerned, my documents will only be read in part; certainly not twice. I have merely said that the Prosecution have done so and have read it twice, possibly even three times, it has just been told me, but it is not my task to criticise that attitude of the Prosecution but merely to state the fact.

THE PRESIDENT: Mr. Justice Jackson, the Tribunal would like to put a further question to Dr. Dix before they hear you, and also--

MR. JUSTICE JACKSON: I would like to make a simple statement of fact.

THE PRESIDENT: Please do.

MR. JUSTICE JACKSON: Which I think will clarify this situation some in justice to the United States of America.

As to the fairness, I call the Tribunal's attention to the fact that we have printed, mimeographed, 250 copies of Dr. Stahmer's entire document book, and it is in the press room waiting for delivery to the press when it is received by this Tribunal, so that we have done everything that we could--everything that we did for ourselves--to make public his documents.

In the second place, we have gone so far as to print things that the Court ruled out, even, rather than to have controversy.

In the third place, it is not the function of the Tribunal, under the Charter, to spread propaganda. A large part of this is stuff that is twenty years old and is in every good library and will not be used by the newspapers. It constitutes a waste of our money. We have tried to do it in order to make this trial completely fair to these people, and now that I have discovered that we are printing documents that the Court has already ruled out, I must say that I shall stop it. I think we have been imposed upon, and

H0090 - 0029

this document book will show it. There is document after document that the Tribunal has already ruled irrelevant, and we have gone to the expense of printing them in order to be more than fair.

DR. DIX: May I answer to that very briefly? As far as the point of view of propaganda is concerned, I regret that my suggestion has not been followed, according to which the public and the world would only hear what has been considered and recognized as relevant by the Tribunal and is presented by us. If the contents of the document book would produce certain propaganda effects, which is entirely against our intentions, then it is merely due to the fact that the contents of the document book did not go through normal and legal channels when they were brought to the knowledge of the press; in other words, from the open sessions of this trial, but that the document book of the Defense, without our knowledge, was placed at the disposal of the press, which probably led to things being communicated to the press and the public which, in the opinion of the Tribunal, may be irrelevant. I am not saying that they are; I am merely talking in the abstract, but if you want to avoid just that; namely, what Justice Jackson wishes to avoid, namely that political propaganda is made by means of this trial, then you must follow my suggestion, and I want only that presented

H0090-0030

and brought to the knowledge of the world which has been considered relevant by the Tribunal and admitted for the presentation here.

It is very difficult to understand every word correctly through the earphones, but if Justice Jackson meant that we are desiring a propaganda effect here, then that is certainly not the case. If he said, furthermore, that the point of fairness was observed and that the Prosecution had done everything to inform the public and the world by placing at the disposal all the documents, then I have no criticism to offer in that respect. Far be it from me to call that unfair, but here we are facing a tribunal and a proceeding, a proper trial. We are not making press propaganda. The presss must have knowledge of what reports come from this Tribunal and from this Courtroom, and the Defense is only grateful if they have the support of the Tribunal in that desire of theirs to have a properly regulated proceeding.

But this is not the crucial point. I have not accused anybody of being unfair. I have merely emphasized that it is in the interest of fairness that the Defense can do the same things which have continually and repeatedly been done by the Prosecution.

THE PRESIDENT: Now, Dr. Dix, will you tell me this: what suggestion you have for shortening the trial? You must recollect in the criticism that you have been making of the Prosecution's case with reference to their documents, that their case has been based almost entirely upon documents. They have called -- I do not know how many witnesses, but very few witnesses. You and the other defendants' Counsel are proposing to call a very great number of witnesses, and what I would ask you is. How do you propose that the trial should be shortened so that it may not last until the end of July or August?

DR. DIX: If I make a suggestion, then I can only do so for myself and my case, my own defense. May I suggest to your Lordship that, first of all, we examine the documentary evidence, and I would ask you to realize that none of the Defense Counsel intends to read their entire document book here before the Tribunal. At any rate, the majority certainly do not.

H0090 - 0031

Those of them I have talked to propose only to use excerpts, and in the choice of those and in the discussion of their relevancy of presentation, a measure could be applied which would, of course, take into consideration the importance but also consider the question of time. I do not think that the presentation of the documents will take that long. My colleague, Dr. Stahmer, has told me, for instance, that although he has an enormous defense case to present, he is of the opinion that he will probably complete his case in less than two hours. I am not a prophet, but I think that the Tribunal is regarding this as more dangerous than it is.

Please give us a trial. We are all anxious not to delay the proceedings. I am sure you can understand that, and we are only too willing to be taught a lesson. If the Court will say that "We do not consider that important," then we shall learn and we shall make advances.

May I suggest, too, not to lay down a final ruling but to go to work without it and to accept our assurances that we shall assist in shortening the trial, but, please, may we have permission first to present what we consider relevant and important? If it should be discovered that we occupy too much time -- and I do not think we will, as I said before -- then we could also discuss that matter again. After all, the Tribunal is at liberty to make decisions, but at this present moment may I ask you not to do anything drastic, since I think that the Tribunal, on the strength of the experience with the documentary evidence of the Prosecution, is overestimating the presentation of our documentary material. Far be it from me to criticise. I know that the Prosecution has mostly relied on documents, and naturally that did take a lot of time.

THE PRESIDENT: Thank you, Dr. Dix. The Tribunal would like to hear-- Of course, they cannot hear all the defendants' counsel on this matter, but they would like to hear one other representative Counsel.

DR. KUBUSCHOK(Counsel for defendant von Papen): May I have permission to draw the attention of the Tribunal some time back to the legal consideratior The Tribunal quite rightly raised the question that, in accordance with the Charter regarding the evidence, the difficulty arises that express rules are

H0090 - 0032

not contained in the Charter. Regarding the proceedings, we have in Paragraph 24 certain rulings which -- and that paragraph refers to the session -- which according to the ruling on all criminal proceedings can be nothing other than oral hearing and a verbal discussion. What is lacking is a sub-paragraph 24 which concerns itself with the collection of documentary evidence, but may I draw your attention to sub-paragraph (e), where rebuttal evidence for the witness is discussed, rebuttal evidence which is not only based upon witnesses but also the production of documents.

It states expressly there that evidence will be collected. At any rate, if you use the German translation and German usage of language, it would not be permissible if this evidence were not produced during sessions but if the treatment of that evidence, on the strength of considerable written material, were to be transferred to the separate room of the Judges.

It is a particularly important principle that, in a Tribunal which consist of several Judges, the impression which is to be conveyed to the Tribunal must be immediate. That can only be achieved if, during oral and verbal sessions, the material is presented and discussed.

Please, may I ask you to consider, too, that in that respect certain experiences have been gathered during this trial. I am sure that everyone who has presented a document must be very grateful fo the President of the Tribunal when he eliminated certain parts or extended certain parts, interfering during the trial and, thus, by conducting the trial in this manner, assisted the Defense Counsel or the Prosecution and indicated to them what the opinion of the Tribunal was; in other words, what was important, and we are sure that the same guidance of the Tribunal would have a favorable effect for the further proceedings.

As far as the legal side is concerned, may I draw your attention to Paragraph 21, which deals with a special ruling on those facts which are general knowledge and do not require discussion. That special ruling in Paragraph 21 underlines the difference between those things which are in need of discussion and which can be discussed. Everything that can be discusse and should be discussed must in one way or another be taken before the

H0090 - 0033

Tribunal so that the Tribunal has the possibility to intervene and make explanatory and guiding remarks. That is the legal side.

Apart from that, I think that I seem to have understood Mr. Justice Jackson's suggestions differently. I think later on his application was somewhat enlarged. I think what he was suggesting was that we, the Defense Counsel, should impose certain limits upon ourselves and that we should not indiscriminately present the documents we have chosen but that we should confine ourselves to take out just those parts which were worth mentioning at the present stage of the trial.

To impose that limitation is certainly a duty, a practical duty of the Defense Counsel. Nothing is more killing for the Defense Counsel and the Prosecution than an unlimited departure

H0090 - 0034

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H0090 - 0035

into irrelevant facts. During a firm guidance of a trial, every Defense Counsel would soon know whether he has hit upon the wrong trail and whether he is presenting irrelevant material and, through presenting irrelevant material would achieve an effect which he certainly does not wish for.

May I just say to what my colleague, Dr. Dix, just said, that it is the anxiety of the Defense and its wish to act in the interest of a defendant and confine himself to essential and relevant parts of his presentation.

THE PRESIDENT: I said on behalf of the Tribunal that we wished to hear two Counsels.

DR. SEIDL (Counself for defendant Frank): I wanted to add some very brief remarks to what my two colleagues have already said.

THE PRESIDENT: It may be possible that everyone of the twenty or more Counsel will at present wish to add something.

DR. SEIDL: I do not know, but I do not think so.

THE PRESIDENT: I said two Coynsel, and I meant two Counsel.

DR. SEIDL: Very well.

THE PRESIDENT: Mr. Justice Jackson, the Tribunal would like to know whether you have anything to add in reply to what has been said.

MR. JUSTICE JACKSON: I think nothing. I thought I was saving time. I begin to doubt it.

THE PRESIDENT: Mr. Justice Jackson, I think the Tribunal would like to know exactly how far your suggestion went. Were you really making anything more than this: That the defendants' Counsel should not think it necessary to read every document in their document book in the course of the presentation of their defense, or were you intending to move the Tribunal to order that they should not be allowed to read any document in their document book at this stage?

MR. JUSTICE JACKSON: I thought their document book should be directed to be filed as an exhibit at this stage of the case, without reading. I would not be particular about if they have passages

H0090 - 0036

they think are of particular importance which they want to call to your attention, but this document book consists of speeches made fifteen years ago and published in the press and in every complete library in the country largely, together with a good deal that has been excluded. It would seem to me that they should go in so they are available to them, and if there are matters in them which particular countries wish to object to, they might raise the question by motions to strike or raise it now if they desire. As far as the United States is concerned, we have no objection to any of it. I think some of it is highly objectionable on the ground of relevancy, but it would take longer to argue it and it goes to certain large questions of reprisals and things of that character that will have to be settled in larger ways than admission of evidence.

THE PRESIDENT: Would you, on behalf of the Chief Prosecutors, have any objection or think it inadvisable to adopt a suggestion which Dr. Dix made that we should see how far the defendants' Counsel were prepared to limit the amount of documents which they read at this stage and see how long it takes and see whether it is necessary to make any further ruling in order to accelerate the trial?

MR. JUSTICE JACKSON: I am quite willing to experiment, but I do suggest that we are now handed a document book containing a number of documents that the Court has passed upon, and, as I recall, Your Honor called Dr. Stahmer's attention at the opening of his case. I do not have so much faith, perhaps, as I ought to have.

THE PRESIDENT: I think it is very likely that documents have got into Dr. Stahmer's book by mistake, owing to the fact that he, being the first defendant, there were some difficulties in preparation, and I have already drawn attention to it. There is, I think, in Dr. Stahmer's book--I am not quite sure--a speech of Mr. Paul Boncourt which had been expressly denied by the Tribunal, and those are the sort of documents to which you are referring, no doubt. And I have drawn attention also in the case of one other Counsel, I think, or one other witness to a document being put to him which the Tribunal had

H0090 - 0037

expressly denied, but of course that is very wrong--that any document should be put into a document book which the Tribunal has expressly denined, but as I say, I think that is very likely due to some mistake.

MR. JUSTICE JACKSON: I am quite ready--and I am sure my colleagues are--to experiment with this and see how it goes.

It is--and I should say this for all of us--it is a difficult thing where we come from different systems and do not always understand what the other man is driving at, it is a difficult thing to reconcile these different procedures, and I am quite willing to be patient and forebearing about it and see how it works.

THE PRESIDENT: Thank you.

You must quite understand, Dr. Stahmer, that I am not making any ruling on behalf of the Tribunal at this moment as to whether Dr. Dix's suggestion will be adopted or not, because the Tribunal will proceed now to consider the matter, and then the ruling will be made.

DR. STAHMER: Mr. President, may I just add a personal explanation? The inclusion of the documents which had been turned down in my book of documents is due to the followin facts: The document book, by request of the translating department, had already been submitted to that department before the Tribunal had made its decision, and that is the explanation. I was under considerable pressure at the time so that the book should be translated, and that is how the matter arose.

THE PRESIDENT: I thought it was probably that, Dr. Stahmer. The Tribunal will adjourn now until 2:30.

(A recess was taken until 1430 hours.)

H0090 - 0038

Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany on 22 March 1946, 1430-1700, Lord Justice Lawrence presiding.

THE PRESIDENT: In considering the matters which have been raised this morning, the Tribunal has had in mind the necessity for a fair trail and at the same time for an expeditious trial, and the Tribunal has decided that for the present it will proceed under rules heretofore announced; that is to say:

First, documents translated into the four languages may be introduced without being read but in introducing them, counsel may summarize them or otherwise call their relevance to the attention of the Court and may read such brief passages as are strictly relevant and are deemed important.

Second, when a document is offered, the Tribunal will hear any objections that may be offered to it and in this connection, I would refer to the rule which the Tribunal made on the 8th of March 1946, which reads as follows:

"To avoid unnecessary translations, Defense Counsel shall indicate to the prosecution the exact passages in all documents which they propose to use in order that the prosecution may have an opportunity to object to irrelevant passages. In the event of disagreement between the prosecution and the defense as to the relevancy of any particular passage, the Tribunal will decide what passages are sufficiently relevant to be translated. Only the cited passages need be translated, unless the prosecution require translation of the entire document."

The Tribunal has allowed the Defendant Goering, who has given evidence first of the defendants and who has proclaimed himself to be responsible as the second leader of Nazi Germany, to give his evidence without any interruption whatever and he has covered the whole history of the Nazi regime from its inception to the defeat of Germany.

The Tribunal does not propose to allow any of the other defendants to go over the same ground in their evidence except insofar as is necessary for their own defense.

H0090 - 0039

Defense counsel are advised that the Tribunal will not ordinarily regard as competent evidence, extracts from books or articles expressing the opinions of particular authors on matters of ethics, history, or particular events.

Now, as to tomorrow's business, the Tribunal will sit in open session for the purpose of hearing applications for witnesses and documents, supplementary applications; and after sitting in that open session, the Tribunal will adjourn into a closed session.

Now, Dr. Stahmer.

H0090 - 0040

THE PRESIDENT: Are you going to refer us to a book which is numbered Number 1?

DR. STAHMER: I cannot hear you sir.

THE PRESIDENT: Are you going to refer us to book Number 1? Which is your book? Or are you referring us to your trial brief?

DR. STAHMER: I shall refer to the Trial Brief, Page 5. As far as I am informed, translations will be numbered the same way as the original German text. Page 5, figure 2. Since this book is translated into three other languages, and the document book, as I am informed, is also translated, I can probably refer to them and then only present what I consider important.

At the beginning of my presentation I have drawn the attention of the Tribunal to the fact that Germany had recounced the Treaties of Versailles and St. Germain, and that this was a justified action. Since the reinforcement had taken place, Germany could proceed to rearm and reintroduce general conscription.

Regarding the situation and the reintroduction of military duty ordered by Hitler, after he had previously unsuccessfully offered its Army to the powers concerned, from that fact alone the conclusion therefore cannot be drawn that at that time the intention existed to prepare Germany for an aggressive war or plan such a war. In this connection I draw your attention to the fact that in foreign countries too, after 1936, rearmament had taken place to a considerable degree, and so as to prove this fact I have referred to speeches and essays which originated from Churchill's book "Step by Step". The quotations have been mentioned by me . . . . . I am referring to the following quotations. On page 5 of this book . . . . . .

THE PRESIDENT: Dr. Stahmer, you must offer these things in evidence as a matter of formality.

DR.STAHMER: Yes, of course. I have the book here with me. I shall offe it right away and the individual quotations which I included in the document book are here. It is document book 2, page 44 -- that's the first quotation I am referring to. Volume 2, page 44.

THE PRESIDENT: Are you going to number your exhibit in some way? You

H0090 - 0041

will call this . . . . . .

DR. STAHMER: Yes.

THE PRESIDENT: You have numbered it 40 I see, is that right?

DR. STAHMER: Yes. The numbers of this book are . . . . . They begin right through . . . . . .

THE PRESIDENT: Yes, but whatever number you propose to use you must say what the number is when you offer it in evidence so that it will go into the transcript.

DR. STAHMER: Very good, Mr. President. Yes.

The quotations from this document book number 2 and number 40, page 9:

"On 18 June the Anglo-German Naval Agreement was signed, which released Germany from the Versailles Naval restrictions. That meant in effect condonation of the breach of military clauses."

On page 35:

"The Air Force is in the process of being almost trebled. This is a colossal expansion which is making the most prodigious demands on our productic potentialities. But quite apart from these immediate needs there is the far greater task of so organizing England's home industries that they will be ready to direct the whole of their enormous and elastic capacity into the channels of war production as soon as a serious necessity for that should arise."

From the article that is dated 13 November 1936, I quote, on page 86, where is says:

"But it is no longer thus. England has begun to rearm on a large scale. Her wealth and her credit, the solidarity of her organization, her vast resources and connections, all contribute to this revival. The British fleet is still by far the mightiest in Europe. Enormous yearly expenditure on it is under consideration for the future."

H0090-0042

Furthermore, evidence is to be provided that particularly Defendant Goering, beginning with the seizure of power, and at various times, consistently emphasized the serious wish to maintain peace and to avoid a war. He has, in fact, repeatedly clearly stated that the measures taken by Germany were not to serve the purposes of aggression.

As evidence of this, I am referring to various speeches made by the defendant Goering, and to begin with I quote from a speech on the 4th of December 1934, which he made at the Krupp works in Essen, and which is contained in the book "Hermann Goering's Speeches and Essays", pages 174 to 176, and is contained in document Book no,1,page18.

From this quotation, I --

THE PRESIDENT (Interposing): I don't think the shorthand writer has yet heard what the exhibit number is.

DR.STAHMER: I beg your pardon. It is Exhibit No. 6.

THE PRESIDENT: That is the 4th of December 1944?

DR.STAHMER: Yes, December 1934.

THE PRESIDENT: It is 1944.

DR.STAHMER: No, '34. That must be a misprint.

THE PRESIDENT: Oh, I see.

DR.STAHMER: 1934.

THE PRESIDENT: I see.

DR.STAHMER: I quote -- and it is the last sentence of the first paragraph:

"Today we want to secure this peace, and we want the world to understand that, time and time again, only a Germany with honor guarantees world peace. Only a free German nation will keep this peace and will know how to preserve this peace.

"Therefore, we demand for us the same rights as possessed by the others."

And on the following page, I quote the last paragraph:

"We do not want any war, but we want our honor. We do not discuss this honor with anybody in this world, that is a fact,

H0090 - 0043

for it is the foundation for the reconstruction of the entire nation. Only he who has a sharp sword at his side has rest and peace".

Sir Nevill Henderson emphasizes in his book "Failure of a Mission", at various passages, Goering's love of peace. Quotations are ascertained in Document Book Nol, page 63, and I offer it as Exhibit No. 23. I am quoting from page 7o of the book. This is Henderson:

"I was inclined to believe in the sincerity of his personal"- Goering's personal desire for peace and for a good relationship with England."

On page 83 of the book, it says:

"I should like to give expression here to my belief that the Fieldmarshal, had it been up to him, would not have gambled at the price of war, as Hitler in 1939. As will be mentioned later, he stood decidedly on the side of peace in December 1938."

On page 273, which is the following page document book, there is the following sentence which I quote:

" I saw the Polish Ambassador on August 31.1939 and gave him an objective, moderate report of my conference with Ribbentrop. I mentioned the cession of Danzig and the plebescite in the Corridor

H0090 - 0044

as the two main points of the German proposals, observed that on the whole, so far as I could see, they were not too unreasonable, and suggested to him to advise his government immediately to propose a meeting between Lipski and Goering."

On page 274 of the book, you will find the following sentences which I quote from the last paragraph:

"Nevertheless, Goering seemed pleased when he returned from the telephone call, and informed us that the latter was on the way to a visit to Ribbentrop, and he was still hoping, apparently, that the war could be avoided, provided that contact could be established."

In February of 1937, the defendant Goering, on the occasion of an international meeting of war veterans in Berlin, made the following speech, which is contained in the book, "Hermann Goering, the Man and his Works", on page 263, and which is contained in Document Book 2, page 42, which is Exhibit No. 39, and from which I quote the following sentences:

"There are no better defenders of peace than the old war veterans. I am convinced that they, above all others, have a right to ask for peace and to shape it. I recognize that those men who, weapon in hand, have gone through four hard years of the hell of the World War, have the primary right to shape the life of the nations, and I know that the war veterans more than anybody else will take care to preserve the blessings of peace for their peoples."

I skip two sentences and then quote:

"But we know that it is a terrible thing, this final argument among nations. It is my fervent and heartfelt wish that this Congress may be able to contribute toward finding the basis for a true peace with honor and equality of rights for all sides. You, my comrades, will have to smooth the way for it."

The same desire is recognizable in the answers given by Lord Halifax to the questions of the defense. I now read the following passages ffom this questionnaire, and I offer the original as Exhibit No. 22. It is contained in Document Book No. 1, page 59.

H0090 - 0045

I think I can omit the first two questions, and I now come to question number 3:

"At this conversation did Goering tell you:

"Any German government would consider the following questions:

"a. The Anschluss of Austria and the Sudetenland to Germany;

"b. The return of Danzig to Germany with a reasonable solution of the Corridor question,

as an integral part of its policy?

"A Yes.

"Question 4. Did you reply to that, 'But, I trust, without a war'?

"A I said that His Majesty's government desires the peaceful solution of the questions pertaining to Germany and its neighbors. Otherwise I did not discuss those questions.

"Question 5. Has Goering replied to that:

"'That depends very much on Britain. England could contribute much to the peaceful solution of this question. Goering does not want a war on account of that matter, but these questions must be solved under all circumstances.'

"A Yes."

The next question --

THE PRESIDENT (Interposing): Does that purport to be a verbatim account of what the defendant Goering said? Dod he refer to himself in the third person, "Goering does not want a war", meaning, "I do not want a war"?

DR. STAHMER: He, too, did not want a war. England could contribute much to the solution of this question. He, too, did not wish a war. That means he, Goering. "He" -- Goering -- "does not wish a war, but these questions must be solved under all circumstances."

This is an indirect speech. It means, "I, Goering, do not wish a war, but the question must be solved under all circumstances."

The next question refers to Dahlerus, but Question 15 is of importance as far as I can see. It is the question put to Halifax:

"Did you get the impression that Goering's efforts to prevent a war were sincere?"

H0090 - 0046

The answer of Halifax is:

"I have no doubt that Goering would have preferred it, if he could have done it."

At the end of June or July '38, the defendant made a speech at Karinhall to the Gauleiters, which was distinctly a speech for peace. I am referring to a statement from Dr. Ueberreiter of the 27th of February 1946, which I am offering in its original as Exhibit No. 38, and it appears in Document Book No. 2 on page 37.

THE PRESIDENT: You are putting in these originals, are you?

DR. STAHMER: Yes, indeed.

In that statement from Dr. Ueberreiter, dated 27 February 1946, at page 38 in Document Book No. 2, Your Honor, it says:

"On 25 May 1938 -- that is, after the plebiscite concerning the reunion of Austria with Germany which had taken place on 10 April 1938 -- I" -- Dr. Ueberreiter -- "was appointed Gauleiter of the Styrian Region, Gau Steiermark.

"A few weeks later -- it may have been towards the end of June or the beginning of July 1938 -- the former Field Marshal Hermann Goering called together all Gauleiters of the German Reich at Karinhall.

"He then delivered a fairly long address to the Gauleiters, describing the political situation as it presented itself at the time, and discussing in detail the aim and significance of the Four Year Plan.

"Field Marshal Goering first pointed out that foreigners were not very sympathetic toward political developments in Germany, and that because of this there was the danger of Germany being encircled. Directing German foreign policy was therefore a difficult task. For that reason, we had to endeavor to strengthen Germany from the economic and military point of view, thus reducing the danger that Germany might be attacked by a foreign power. At the same time, this would result in Germany again exercising an increasingly important influence in European politics, after she had again become strong.

"After that, Field Marshal Goering discussed the Four Year Plan. In this connection, he remarked:

"By and large, Germany was cut off from the raw material sources of the world.

H0090 - 0047

"She therefore had to open up her own raw material sources in her own territory by dint of increased efficiency. But the only reason for that was to make Germany independent of foreign countries and was not by any means the preliminary preparation to aggressive war.

"He then strewsed, with great emphasis, that Germany's foreign policy would have to be conducted in such a way that there could not be a war under any circumstances. The present generation was still feeling the effects of a lost World War; the outbreak of war would stagger the German people. Furthermore, it was his opinion that a new war would spread widely, and even the outcome of a war against France alone would be questionable.

"In conclusion, he summarized his address by saying that we had to do our utmost to make the Four-Year Plan a success, and that all hardships brought on the people by it would have to be borne, and were justified, because success could prevent war.

"May I say that I am remembering all details of this speech so accurately because this was the first time that I had been informed of these conditions, which were so important for Germany, by a leading personality, and because, therefore, up until the beginning of the war I did not believe that war would come about."

The solution of the Austrian problem cannot be considered as an aggressiv action of Germany. It was the result of the response to the desires of the greater part of the Austrian population for the Anschluss. The defendant' opinion on this problem can be seen from a telephone conversation held between the then Foreign Minister von Ribbentrop on the 13th of March 1938. The record of this conversation has already been produced on No. 2949-PS. I shall quote from this conversation some passages which have not yet been read into the record and which are contained in Document Book No. 1, pages 55-56. I only propose to quote the following passages:

"I want to say one thing: If it is said"--this is Goering's conversation--"if it is said here that we have overpowered the independence of the Austrian people under pressure, it couldonly be said that one thing

H0090 - 0048

was put under pressure, but not from our side, and that is the infinitely small government. The Austrian people is only now free. I would simply suggest to Halifax or to a few really important people whom he trusts that he just send them over here so they can look the situation over. They should travel through the country. Then they can see everything."

And a few sentences later:

"Which state in the whole world will be harmed by our union? Are we taking something from any state?"

Then a little later on it says, I think two sentences later on:

"All people are German. All people speak German. Thus there is not a single state involved."

The defendant Goering--I am referring to page 11 of my book-- did not only wish to maintain peace abroad; he also applied himself for the preservation of peace at home. I am referring to a speech he made on the 9th of April 1933 at the Berlin Sports Palace. It appears in the book "Hermann Goering: Speeches and Essays," and is document book No. 1, page 35. I am offering it as Exhibit No. 13. I quote the first sentence:

"Volksgenossen (compatriots), on the other hand, however, we also want to be generous. We do not wish to practice petty revenge. After all, we are the victors. Therefore, let us be generous. Let us realise that we, too, thought differently at one time."

And then a little further down:

"...the stronger and freer we feel ourselves as such, the more generously, the more freely are we able to overlook what belongs to the past and really sincerely extend our hand in reconciliation."

And a further quote from another speech of the defendant on the 26th of March 1938, document book No. 1, page 37. This is another quotation from "Hermann Goering: Speeches and Essays." The exhibit number is 14. I quote only one sentence:

"...You were great when you suffered, you were great when you fought, and now you must show that you are also great in kindness, and especially so towards the many who had been misled."

H0090 - 0049

THE PRESIDENT: Doctor Stahmer, can't you give the exhibit number?

DR. STAHMER: Yes, I think it was No. 13. I am going to have a look. It was No. 14.

His attitude toward the Church was expressed by the defendant Goering in a number of speeches. For instance, on the 26th of October 1935 he made the following statement. I am quoting from "Hermann Goering: Speeches and Essays," document book 1, page 39, Exhibit No. 15:

H0090 - 0050

I am quoting the sentences as follows:

"It is up to the Church alone whether it wishes to have peace. The Government and the State have never attacked the Church, we have promised the Church protection and we assure them that they have this protection today to the fullest extent. Therefore, it is not a matter about which any kind of reproach could be made."

And then there is a speech of the 26th of March, 1938, which is also contained in Hermann Goering's "Speeches and Essays", document book one, page 41, Exhibit 16, and I quote the first and second sentences:

"We do not wish to destroy any Church and we do not wish to abolish any belief or religion. All we want is to bring about a clear separation. The Church has its definite, very important and very necessary tasks and the State and the Movement (political movement) have other, just as important and just as decisive tasks."

I refer further to a document of a certain Werner Jentsch, dated 25 June, 1945, addressed to this Tribunal, which is contained in document book number one, page 44 to 46, and this is Exhibit?

I quote from figure eight.

"Hermann Goering himself had an answer given to me through his chief adjutant relative to a petition on behalf of the introduction of an official spiritual service especially for the Luftwaffe; that he could not at the moment do anything because Adolf Hitler had not yet made a final decision concerning the religious question. However, he wished full freedom of religion in the Luftwaffe, including all Christian denominations, and every member of the Luftwaffe could choose for himself whichever chaplain or civilian pastor he desired."

The affidavit from Gauleiter Dr. Veberreiter, dated 27 February, 1946, which I mentioned earlier and which is contained in document book number 1, page 39 -- page 37, under figure 2, refers to the events of the night of the 9th to the 10th of November 1938 and it says:

"A few weeks after the events against the Jews on the night of the 9th to the 10th November, 1938, towards the end of November or the beginning of

H0090 - 0051

December, 1938, Field Marshal Goering again called all Gauleiters to Berlin. He criticized the action in harsh words during this meeting and stated that it had not been in keeping with the dignity of the nation. Further, it had also heavily damaged our prestige abroad. If one interpreted the murder of Consul von Rath an an attack of Jewry against the Reich, then the German Reich had ways of countering such an attack that did not include appealing to the baser instincts. In an orderly state no irregular mob action could be tolerated under any circumstances."

And in the last paragraph, unnder number two it says:

"In conclusion, he asks the Gauleiters to use their entire influence to see to it that such incidents which injured Germany would not recur in the future."

Page 16, under figure five -- I think I can skip that as an explanation on that has already been given.

That the defendant Goering took his duty as Supreme Judge very seriously becomes apparent from an affidavit of Dr. Lehmann o f the 21st of February, 1946. This is in document book number one, page 106, Exhibit Number 27. I quote from figure II and it states:

"The opinion I have of him is the following:

"The Reichsmarshal originally took a negative attitude toward lawyers. He was evidently influenced by the Fuehrer. The more he occupied himself with legal matters of the Air Force the more his attitude was changed. Toward the end of the war the Reichsmarshal was one of the high commanders who liked to consult lawyers. He took special interest in the legal matters of the Air Force and attached great importance to them. He assigned to its legal department intricate cases for investigation and he was sceptical of the reports of other offices."

And then in the following:

"In matters where I had contact with the Reichsmarshal he had me thoroughly informed. He took an unusual amount of time in these matters. The conference when there was a difference of opinion, took a quiet and objective course."

Then under Figure III:

H0090 - 0052

"Concerning the administration of justice within the Air Force the Reichsmarshal reserved for himself many cases for his own confirmation of the sentence, including all death-sentences.

H0090 - 0053

"In passing judgment on individual cases, in spite of the harshness of the Fuehrer demanded of all judges, he was still inclined to show occasional leniency. In cases of treason and especially in moral crimes he showed relentless severity. I know from the records that in severe cases of rape he would often quash a sentence because he considered a death sentence as mandatory. It did not matter whether the woman involved was from Germany or from the occupied territories. I believe to remember at least one case in the records where he even changed the manner of execution and ordered that the soldier be hanged in the Russian village in which he had committed the rape.

"When presiding at a trial the Reichsmarshal was very lively but benevolent; also in his recommendations for mercy to the Fuehrer.

"In his own decision the Reichsmarshal, no doubt, often acted intentionally contrary to the thoughts and demands of the Fuehrer, especially in political matters which he judged so much more mildly and in cases of transgression against inhabitants which he judged much more harshly than the Fuehrer.

"I have often discussed the personality of the Reichsmarshal with his legal adviser, a very experienced, quiet and conscientious lawyer as well as the Chief Military Prosecutor (Oberreichskriegsanwalt) who was distinguished by the same qualities and was often with him. We were of one opinion about the Reichsmarshal."

In the course of this trial the Prosecution have repeatedly referred to the so-called "Green Folder", which was submitted under Number 1743-PS. This is not, as the Prosecution maintains, a regulation for the spoliation and destruction of the population.

Its objectwas rather economic mobilization and the regulating and influencing of industry, economy and the regular use of supplies, traffic installations in the territories to be occupied through military operations with special consideration of that fact that Russia had no individual economy but only a state economy, strictly regulated by the state.

In addition to that, because of the Russian attitude vast destruction would have to be expected. Nowhere does it contain an order or directive which burdens certain groups of the population with anything beyond the necessities caused by the war.

From that "Green Folder" I have quoted a number of passages which are to prove my statements. I do not want to refer to them in detail but I should like

H0090 - 0054

to draw your attention to one very characteristic ruling, where it says, and this is page 94 of this "Green Folder", second paragraph:

"Between the population and the tro ps particularly good relationship is to be established."

A little later on, on the same page:

"Good relationship to the population must be aimed at, that in particular with good cultural workers."

H0090 - 0055

I am now coming to the next paragraph.

"The German Armed Forces entered the war fully respecting international agreements."

THE PRESIDENT: Where is this art?

DR. STAHMER: Page twenty-thre , Mr. President.

THE PRESIDENT: Which volume?

DR. STAHMER: In the trial brief.

THE PRESIDENT: We seem only to have twenty-two pages in our trial brief. Are there two volumes?

DR. STAHMER: Yes, there are two volumes to that. That was divided because of translating. May I continue?

. . . . . .

"The German Wehrmacht entered upon the campaign while fully adhering to international agreements. No extensive encroachments by German soldiers were noted. Individual lapses were severely punished. Announcements and reports of atrocities committed against German soldiers followed immediately on the beginning of hostilities. These reports were carefully investigated. The result was laid down by the Foreign Office, German Foreign Office, in "White Papers", which were sent to Geneva. In this way the "White Paper" came into being which deals with the crimes against the laws of war and humanity committed by Russian soldiers."

GENERAL RUDENKO: Your Honors, defense counsel for Goering, Dr. Stahmer, intends to submit to the Tribunal and to read into the record excerpts from the so-called "White Book" which was published by the Hitler Government in 1941 in accordance with some of the violations which took place regarding the German prisoners of war. I think that these excerpts can not be submitted and read into the record here because of the following reasons:

There can only be put in evidence facts which refer to and which are relevant to this case; there can be submitted to the Tribunal only documents which refer to the crimes which were perpetrated by the major German criminals.

The "White Book" is a series of documents of invented data regarding violations which were perpetrated not by the Fascist Germans but by other

H0090 - 0056

countries. Therefore the data contained in the "White Book" can not serve asevidence in this case. This conclusion is very well founded, because the "White Book" is a publication which served the purpose of Fascist propaganda and which was fed by inventions and falsifications in order to hide crimes which were perpetrated by the Fascists. Therefore I should request the Tribunal to refuse the reading into the record or submitting to the Tribunal excerpts from the so-called "White Book."

THE PRESIDENT: On what theory do you justify the presentation of this evidence, Dr. Stahmer?

DR. STAHMER: The request, whether it is possible and admissible that these "White Books" should be referred to during this trial as evidence, has been discussed repeatedly. In particular it was the subject of the statement when we were

H0090 - 0057

concerned with the question of whether I would be allowed to refer to this book as evidence. So far as I know this has been admitted as evidence, and it was pointed out during that discussion which arose because of an objection which was raised at the time, so far as this part of the evidence is concerned, where it is of importance for establishing the value of evidence. At the time I pointed out certain actions which were taken against German prisoners of war so as to make it possible to understand what measures were taken on the part of Germany. One can not understand the deeds committed by these men who carried out these actions; one can not understand their inner attitude if you do not look at the facts and conditions under which these actions took place, and if you do not investigate the motives which caused them to take these actions. And because of the importance of the motive, and so as to understand the accusations which were raised against the Germans, it seems to me that reference to this document is most important.

THE PRESIDENT: Have you finished?

DR. STAHMER: Yes.

THE PRESIDENT: Well, we are here to try the major war criminals; we are not here to try any of the signatory powers. Therefore you must justify the introduction of evidence against the signatory powers in some legal way.

DR. STAHMER: The presentation, if I may repeat that, is due to the following arguments and reasons:

The defendants here are accused that under their command and against members of foreign armed forces crimes were committed which are against the Geneva Convention. Furthermore, it is tried to make it understandable that if such excesses and perpetrations took place on the part of the Germans they were caused by the fact that similarly the other side committed similar perpetrations, and that for that reason those deeds must be judged more mildly than if the opponents had conducted themselves correctly. It is a question of the motive, and this is important in connection with these facts.

THE PRESIDENT: Are you attemtping to justify the introduction of this evidence on the ground of reprisals?

DR. STAHMER: Not only on the strength of reprisals but also on the basis of the motive.

H0090 - 0058

THE PRESIDENT: You are asking us to admit a document a German governmental document. Now, under the Charter we are bound to admit documents, governmental documents, and reports of the United Nations, but it is no where said that they were at liberty to admit documents issued by the German Government. We can't tell whether those documents contained facts truly stated or not.

DR. STAHMER: We are here concerned with and these documents are records of legal proceedings. These proceedings or investigations must in my opinion have some value as evidence just as have official documents. They were legal documents, records, of court proceedings.

GENERAL RUDENKO. I should like Your Honors to emphasize one thing here. Defense counsel Stahmer tries to submit these documents in order to, as he says, to submit his reasons which would explain the crimes of the Germans. I should like to state here that in these documents, which have already been submitted by the prosecution and were introduced here and submitted to the defendant G oering, state that the documents regarding the crimes were prepared before the beginning of the war.

H0090 - 0059

THE PRESIDENT: Dr. Stahmer, what are the dates of these documents that you are asking us to admit?

DR. STAHMER: I have them here, individually.

(A short pause).

I am having the records looked for.

MR. JUSTICE JACKSON: I suggest, your Honor that I support fully the objection made by General Rudenko. I had supposed the one thing that Counsel on both sides were agreed upon, when the matter was under discussion before, was that no reprisals against prisoners of war are tolerated. Even my learned adversary, Dr. Exner, agreed that that is the law.

Secondly, and certainly, we must know what crimes it is that are sought to be excused. For what crimes are these the motives? Counsel says they are barren of motives. What is the notive in shooting American or British fliers, that there were some violations on the part of the Russians as they claim? The only way, it seems to me, that evidence of this character is admissible would be to bring it under the doctrine of reprisal very strictly by taking specific offenses and saying, "This offense we admit but we committed it in reprisal for certain other specified offenses."

I submit that general allegations of this character and relating to prisoners of war are admittedly inadmissible and carry us far afield in the trial of this case.

DR. STAHMER: May I point out one fact: For instance, I have here a telegram originating with the representative of the Foreign Office with the OKH, Supreme Command of the Army. It is directed to the Foreign Office, August, 1941. In other words, this is an official document. Until now, the Prosecution has submitted official documents to a considerable degree and they have been used as evidence against the Defendants. In other words, here when we have an official document for a presentation which is in favor of the Defendant then it seems to me that this should be admitted, too, provided that this is legally possible. Formally, it seems to me that we are here concerned with a telegram coming from a representative of the Foreign Office with the Army Command, addressed to the Foreign Office, dated August 1941. It says, in the operational report No. 11, which was captured -- it was found that a division

H0090 - 0060

found 400 bodies --

THE PRESIDENT: You must not read it, as we are discussing its admissibility.

DR. STAHMER: I see. I beg your pardon. I had misunderstood you.

Mr. President, you asked me what document --

THE PRESIDENT: The date of the White Book.

DR. STAHMER: The date of the White Book. I see. I beg your pardon. I misunderstood. It is Berlin, 1941.

THE PRESIDENT: That is not a date. That is a year.

DR. STAHMER: Yes, sir. It says, "Crimes against the laws of war and humanity, contained in documents compiled by the Foreign Office, first volume, Berlin, 1941." That is what it says. Adn the date of its publication is not apparent from the book itself. After that, follow the individual documents and investigations which are contained in this book, and then follow a number of records which have individual dates.

THE PRESIDENT: Then there is nothing to show when that document was communicated, either to the Soviet Government or as to when it was communicated -- if it was -- to Geneva or to the Protecting Power.

DR. STAHMER: It has been communicated to Geneva. It was handed to the Red Cross in Geneva.

THE PRESIDENT: When?

DR. STAHMER: In 1941. I had applied to have these books sent over from Geneva and to make inquiries in Geneva at the Red Cross.

Mr President, may I once more point out that it is an official document issued by the Foreign Office? It is a collection of a number of reports contained in an official document.

THE PRESIDENT: That is not the real point that the Tribunal is considering. The question is, How can you justify on a trial of the major war criminals of Germany, evidence against Great Britain or against the United States of America or against France? If you are going to try the actions of all those four signatory powers, apart from other considerations,

H0090-0061

there would be no end to the trial at all, and their conduct has got no relevance to the guilt of the major war criminals of Germany unless it can be justified by reference to the doctrine of reprisal, and that cannot be justified in any way. And therefor the Tribunal considers the document is irrelevant.

DR.STAHMER: Furthermore, on the subject of the aerial war, I am drawing your attention to page 25 of my trial brief, that the question of guilt is influenced by the question of whether the German Air Force went into the attack upon other countries after the British Air Force carried out a number of attacks against the civillian population --

SIR DAVID MAXWELL-FYFFE: My Lord, I object to this evidence I wasn't quite sure whether Dr, Stahmer had passed dealing with this evidence with regard to the air war or whether he was illustrating his argument. I want to make it quite clear that I object to the first part of it as being too remote, that is, the evidence about the various conferences which took place with regard to the regulation of aerial warfare.

With regard to the second part of the evidence, I object to the documents which purport to show that Great Britain attacked non-military targets. Where I have been able to check the allegations, I find there is a complete dispute as to whether the targets were military or non-military targets, and therefore I cannot accept the German official reports as being evidence of any purported value on their part, and I respectfully submit that unless the Tribunal had authority from the Charter they ought to take the same line.

H0090 - 0062

I make these two additional points to the points raised by my learned friends, General Rudenko and Justice Jackson, on the general question. I do not want to take up more time with the argument by developing that point. I will be pleased to help with any aspect of it.

THE PRESIDENT: It seems to me, Dr. Stahmer, that this matter stands upon exactly the same footing as the matter upon which we have just ruled.

DR. STAHMER: That is right.

I believe that one document amongst the several that are quoted on aerial warfare -- that is quoted at page 27. This is a statement from a French General, which is concerned with the fact that the German Air Force in Poland adhered to the laws of warfare and only attacked military targets. I believe that against the reading of that quotation there would not be any objection. That is page 27.

THE PRESIDENT: Page 27 of the trial brief?

DR. STAHMER: There I mention a quotation from General Armengaud, the French Air Attache of Warsaw on September 14, 1939.

THE PRESIDENT: Yes.

DR. STAHMER: There it is said that after the outbreak of war the German Air Force under its Commander in Chief, Goering, did not, by order of Hitler, attack any open cities in Poland. This is confirmed by the British Under Secretary of State for Foreign Affairs, Butler, on September 6, 1939. The letter of General Armengaud said the following:

"I must emphasize that the German Air Force acted according to the laws of war; it only attacked military targets and, if civilians were often killed and injured, this happened because they were near these military targets. It is important that this should be known in France and in England, so that no reprisals will be taken, so that there is no cause for reprisals, and so that total air warfare will not be let loose by us."

THE PRESIDENT: Dr. Stahmer, what is the origin of that?

DR. STAHMER: It is contained in the document concerning the bombing war, Number 16. It says, "Report of the French Air Attache at Warsaw, General Armengaud." It is dated September 14, 1939, and then comes the report, from which I have just quoted an extract.

H0090-0063

THE PRESIDENT: Yes.

DR. STAHMER: I am offering that.

THE PRESIDENT: Yes.

DR. STAHMER: And now I am proceeding to page 30 of the trial brief. It says under Figure 10, where I am referring to the creation of the Secret State Police by the defendant Goering, a quotation is stated there from the words of the book, "Hermann Goering, the Man and the Work", Document Book 2, page 53 to 54, which I submit as exhibit number 44. I quote the following passage:

"It can be seen from the Stettin trial and also from others, Goering took drastic measures against men who acted on their own authority against his instructions.

H0090 - 0064

"The Ministerpresident gave an insight into the supervision of poliiical prisoners to hundreds. He did not wait until asked; the offer came from him.

"--On the occasion of the Christmas amnesty of 1933, he ordered the release of nearly 5,000 prisoners from the concentration camps. 'Even they must be given a chance.' It would have been only too understandable if those released had everywhere found doors and gates closed to them whichever way they turned. That, however, was not in keeping with the spirit of this act of mercy. Nobody was to think himself shut out. Therefore, Goering, in a clearly worded decree, ordered that no difficulties were to be placed in the way of those released, by the authorities or the public. If this action were to have any point, all attempts were to be made to receive these people, who had sinned against the state, into the community again as full fellow Germans."

And from the last paragraph, I am reading the second sentence:

"In September 1934 he ordered the release of a further 2,000 prisoners in a second amnesty."

In this connection I beg to offer a telegram which I have received a few days ago, and I request that it be admitted into evidence. It is an unsolicited telegram originating from a certain Hermann Winter, Berlin W 20, Eisenach Street 118. It has been included in the document book.

MR. JUSTICE JACKSON: If we are to examine unsolicitied correspondence or telegrams, if it is to become evidence, I have a washbasket full of it in my office that, if that kind of material could be used as evidence in this case without any verification, I could bring here in rebuttal. It does seem to me that we should know something about this, more than just a wire has come in from some unknown person who may not even have been the signer; maybe it is an assumed name. I think that we are entitled to a little better foundation than that.

THE PRESIDENT: Dr. Stahmer, have you any other basis?

DR. STAHMER: I have no other basis, and I beg to have your decision whether this is admissible as evidence.

THE PRESIDENT: Well, I do not think we could admit it simply as a telegram which has been received by you from an unknown person.

H0090 - 0065

DR. STEMMER: I asked your decision; therefore, it has been refused.

I am coming to the end, and page 34.

THE PRESIDENT: Of the trial brief?

DR. STEMMER: Of the trial brief, page 34, yes, figure 12. With respect to the question of whether one could blame the defendant of having had confidence in Hitler and followed him, it is important to know Churchill's attitude, expressed in his book, "Step by Step," and I am quoting two passages, Document Book Number 2, Page 46. It says --

MR. JUSTICE JACKSON: This is in 1937, before the events with which we have mainly been dealing here. I do not think it is very important. Mr. Churchill's speeches are well known, but I do think that we waste time going into Mr. Churchill's opinions

H0090 - 0066

back in 1937, before the event, when he is doubtless of the same position as Dahlerus, the witness, with reference to his knowledge of what was going on behind the scenes.

THE PRESIDENT: In as much as we have already received this book and some passages from it, you may state this.

DR. STAHMER: I may state it? very well, Page 187, in an article, "Friendship with Germany" of 17 September 1937:

"One can condemn Herr Hitler's system and still marvel at its patriotic achievement. Should our country be defeated I could only desire that we would find an equally indomitable champion who would give us our courage again."

THE PRESIDENT: I only said that you could read it because you had read from this book of Mr. Churchill's but at the same time it seems to be absolutely irrelevant.

H0090 - 0067

May I request to refer to the quotation from page 3, which is also a description of Hitler's personality. I consider it of importance because I contribute considerable weight to Churchill's judgment. It says --

THE PRESIDENT: But, Dr. Stahmer, don't you think we have heard sufficient about Hitler's personality?

DR. STAHMER: Yes, but not from that source.

THE PRESIDENT: Presumably the Defendant Goering knows more about Hitler than Mr. Churchill.

DR. STAHMER: If the Tribunal does not wish to have me read it, then of course, I will fulfil that wish.

THE PRESIDENT: I think it is cumulative.

DR. STAHMER: In that case I have finished. May I just make one reservation with regard to the arguments which I haven't been able to raise. As I said this morning, I had a certain amount of evidence which I haven't been able to submit because I haven't received it yet.

THE PRESIDENT: Yes.

MR. JUSTICE JACKSON: Would this be a convenient time, if your Honor please, to make the record concerning the documents which I was to offer formally for the record?

THE PRESIDENT: I don't quite follow? What documents are you referring to?

MR. JUSTICE JACKSON: The ones used on cross examination.

THE PRESIDENT: Yes, certainly.

MR. JUSTICE JACKSON: -- which your Honor spoke to me about.

THE PRESIDENT: Yes.

MR. JUSTICE JACKSON: I understand they have been handed to the Secretary and they have been marked.

The affidavit of Halder is US 779. It is offered.

Document No. 3700-PS is offered as US Exhibit 780.

Document No. 3575-PS is offered as US Exhibit 781.

Document No. 3787-PS is offered as US Exhibit 782.

Document No. 2523-PS is offered as US Exhibit 783.

Document No. 014-PS is offered as US Exhibit 784.

H0090 - 0068

Document No. 1193-PS is offered as US Exhibit 785.

Document No. EC-317 is offered as US Exhibit 786.

Document No. 3786-PS is offered as US Exhibit 787.

Document No. 638-PS is offered as US Exhibit 788.

Document No. 1742-PS is offered as US Exhibit 789,

M. CHAMPETIER DE RIBES: Mr. President, Dr. Stahmer in his speech did not speak of document No.26, which is a note from the German Government to the French Government concerning the treatment of German prisoners in France in 1940. The reasons which made us reject the White Book from the discussion make it necessary to reject this document too, and I gather that Dr. Stahmer must have understood that for the same reasons and, therefore, did not mention it. I would like to know whether he understood it this way and have this confirmation.

DR. STAHMER: I haven't mentioned the document.

THE PRESIDENT: I call on Counsel for the Defendant Hess.

DR. SEIDL (Counsel for the Defendant Rudolf Hess): Mr. President and your Honors: before entering into collecting evidence, upon request from the Defendant Hess I have to make the following remarks.

The Defendant Hess denies the jurisdiction of the Tribunal as far as it is to be applied, as far as other crimes than war crimes are established the subject of the trial, but he expressly assumes full responsibility for all acts or laws which he has signed. Furthermore, he assumes responsibility for all decrees and directives which he, in his capacity of Deputy of the Fuehrer and Minister of the Reich, has issued. For those reasons he does not desire to be defended in any matters which refer to sovereign matters of German affairs. For that reason, that applies to matters of the state and similar affairs.

I shall, therefore, only submit evidence of that type which will clarify --

THE PRESIDENT: Dr. Seidl, the interpreter finds it difficult to hear you. Perhaps you are speaking a little bit too far from the microphone.

DR. SEIDL: This applies, for instance, to the tasks and activities

H0090 - 0069

of the foreign organization of the NSDAP -- the Party. Over and above that, evidence will only be submitted to the Tribunal where it is necessary to ascertain historical truths. This applies, among other things, to the causes which made Rudolf Hess undertake his flight to Britain and to the intentions which he was pursuing at the time.

The evidence which I have prepared is collected in three document books. Considering the acceleration desired by the Tribunal, I shall forego the first volume altogether. Any documents from that I will not read, and I will therefore ask the Tribunal to take cognizance of those parts of that book which have been marked in red. I shall only read the affidavit which is at the end of the document book. It is the affidavit of the former secretary of the Defendant Rudolf Hess, Hildegard Fath, and I shall read furthermore--

THE PRESIDENT: Dr. Seidl, if you are passing from your opening remarks and going to deal with the documents, I think it is right tp point out to you that there can be no challenge to the jurisdiction of this Court, here. Article 3 provides that the Tribunal shall not be challenged by the Prosecution or by the Defendants or their Counsel, and the Tribunal cannot hear any argument upon that subject. Now you can go on with your documents.

DR. SEIDL: Very good. I shall furthermore read from Volume II the record of a conversation between the Defendant Rudolf Hess and Lord Simon, which took place on the 10th of June, 1941, in England.

So as to prevent repetition in the reading of evidence, I shall today only read the affidavit of the witness Hildegard Fath, page 144 of the document book.

H0090-0070

This affidavit informed of the consequences of an incorrect affidavit.

THE PRESIDENT: Is that right, Dr. Seidl, 144. In our colume 2, it seems to be part of the conversation.

DR. SEIDL: It is 164.

THE PRESIDENT: I beg your pardon. Yes, go on.

"Having been instructed on the consequences of a false sworn statement, I declare the following under oath, to be submitted to the International Military Tribunal in Nurnberg."

Then comes the "Personal Data;" and I am quoting literally from Hildegard Fath:

"I was employed as private secretary of the Fuehrer's deputy, Rudolph Hess, in Munich, from 17 October 1933, until his flight to England in May 1941.

"Beginning in the summer of 1940 -- I cannot remember the exact time -- by order of Hess I had to procure secret weather reports about climatic conditions over the British Isles and over the North Sea, and to forward them to Hess. I received the reports from a Captain Busch. I also received reports partly from Miss Sperr, the secretary of Hess, with his liaison staff in Berlin.

"Hess left a letter behind on his departure by air for England, which was handed to the Fuehrer ata time when Hess had already landed in England. I read a copy of the letter. The letter began with the words like this: 'My Fuehrer, when you receive this letter, I shall be in England.' I do not remember the exact wording of the letter. Mainly, Hess occupied himself in the letter with the proposals which he wanted to present in England in order to achieve peace. I do not remember the details of the proposed settlement. I can however state with all certainty that no word was mentioned about the Soviet Union or about the fact that a peace treaty was to be concluded with England in order to have the back free for another front. If this would have been mentioned in the letter, then I most certainly would have remembered that. I had to gain the absolute impression from the contents of the letter that Hess undertook this extraordinary flight in order to prevent further bloodshed, and in order to create favorable prerequisites for the conclusion of a peace.

"In my capacity as secretary of Rudolph Hess, for a period of years, I

H0090-0071

have had an opportunity of learning his attitude towards certain questions. If it is now told to me that in a letter of the Reich Minister of Justice to the Reich Minister and Chief of the Reich Chancellory, Lammers, of 17 April 1941, it is mentioned that the Fuehrer's deputy has presented the introduction of corporal punishment against Poles in the annexed Polish territories for consideration, then I cannot believe that this attitude of that department headed by Hess was due to a personal decision of his. Such a proposal would be totally contradictory to the attitude which the Fuehrer's deputy has shown on similar questions on other occasions."

I shall refrain from readin the affidavit about the witness Sperr, page 166 of the document book. From the first two columes of the document book I shall, as I have already said, only read parts from a discussion between Hess and Lord Simon. So as to prevent the report of that discussion to be split, may I beg permission of the Tribunal to read this document on Monday, next?

THE PRESIDENT: Yes, certainly. You mean not to go on any more now?

DR. SEIDL: With the permission of the Tribunal, I would then finish now?

THE PRESIDENT: Have you no other document you wish to produce?

DR. SEIDL: I beg your pardon. There are certain passages in parts of the document books which I propose to read byt I should prefer to refer to those documents coherently during my presentation to the Tribunal later on.

THE PRESIDENT: Very well, Dr. Seidl, if you wish it, we will adjourn now.

(The Tribunal adjourned until 23 March 1946 at 1000 hours.)